

Federal Communications Commission

DA 99-2810

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mertzon, Texas)

(Eldorado, Texas)

(Burnet, Texas)

(Powers, Michigan)

MM Docket No. 99-356
RM-9779

MM Docket No. 99-357
RM-9780

MM Docket No. 99-358
RM-9783

MM Docket No. 99-359 ✓
RM-9784

DISPATCHED

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FCC MAIL SECTION

NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 1999

Released: December 17, 1999

Comment Date: February 7, 2000

Reply Date: February 22, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-356, RM-9779**Petitioner:** Schleicher County Radio

c/o Randy Parker
25415 Glenn Lock
The Woodlands, Texas 77380

Proposal: Allot Channel 266A at Mertzon, Texas, as the community's first local FM broadcast service.

Community	Present	Proposed
Mertzon, Texas	-----	266A

Coordinates: 31-15-30 NL and 100-49-00 WL

Additional Information: Channel 266A can be allotted to Mertzon without a site restriction. Mexican concurrence will be requested for the proposal for Mertzon. Mertzon is the county seat for Iron County. Mertzon is an incorporated community with a post office and zip code (76941) and a population of 778 people according to the 1999 U.S. Census.

FCC Contact: Kathleen Scheuerle, (202) 418-2180**B. MM Docket No. 99-357, RM-9778****Petitioner:** Schleicher County Radio

c/o Randy Parker
25415 Glenn Loch
The Woodlands, Texas 77380

Proposal: Allot Channel 293A at Eldorado, Texas, as the community's first local broadcast service.

Community	Present	Proposed
Eldorado, Texas	-----	293A

Coordinates: 30-51-36 NL and 100-36-00 WL

Additional Information: Channel 293A can be allotted to Eldorado without a site restriction. Mexican concurrence will be requested for the allotment at Eldorado. Eldorado is the county seat for Schleicher County. Eldorado has its own post office and zip code (76936) and has a population of 2,019 people according to the 1990 U.S. Census.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

C. MM Docket No. 99-358, RM-9783**Petitioner:** Elgin FM Limited partnership

c/o Ann C. Farhat
Bechtel & Cole Chartered
1901 L Street, N.W., Suite 250
Washington, D. C. 20036

Proposal: Allot Channel 240A at Burnet, Texas, as that community's third local FM broadcast service.

Community	Present	Proposed
Burnet, Texas	223A, 295A	223A, 240A, 295A

Coordinates: 30-51-05 NL and 98-17-35 WL

Additional Information: Channel 240A can be allotted to Burnet with a site restriction 12.1 kilometers (7.5 miles) northwest of the community. Concurrence of the Mexican government will be requested for this allotment. Additionally, we find that Burnet is the County Seat for Burnet County. Burnet is an incorporated community with a population of 3,423 people according to the 1990 U.S. Census with its own post office and zip code (78611).

FCC Contact: Kathleen Scheuerle, (202) 418-2180**D. M Docket No. 99-359, RM-9784****Petitioner:** Lyle R. Evans

c/o Lyle R. Evans
1296 Marian Ln.
Green Bay, Wisconsin 54304

Denise B. Moline
1212 So. Naper Blvd, Suite 119
Naperville, Illinois 60540

Proposal: Allot Channel 297C3 to Powers, Michigan, as that community's first FM broadcast service.

Community	Present	Proposed
Powers, Michigan	-----	297C3

Coordinates: 45-41-12 NL and 87-31-30 WL

Additional Information: Channel 297C3 can be allotted to Powers without a site restriction. Canadian concurrence will be requested for this allotment. Powers, an incorporated community, located in Menominee County, has a population of 271 people according to the 1990 U.S. Census and 490 people according to the 1980 U.S. Census. Powers has its own post office and zip code (49874). Although petitioner indicates that Powers is administered by a Village President and council members, has its own water and sewer system, fire station and library, along with some local businesses, petitioner failed to provide names and addresses for council members

or identify the local businesses with names and addresses. Parties filing comments are requested to present the Commission with specific information to demonstrate that Powers has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. To support community status, parties could provide names of businesses which contain "Powers" in their names, excerpts from a telephone book showing Power's separate telephone exchange, a list of industries with addresses, name and address of the Village President, council members, evidence that rural residents view Powers as a center for shopping and medical services, name and address of schools, parks, civic associations, or any additional information to support community status. Failure to provide the requested information could result in a denial of the proposal.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before February 7, 2000, and reply comments on or before February 22, 2000, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, S. W.; TW-A325, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters, Washington, D. C.